IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/09/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 15952 of 2003
and W.P.Nos. 17159 and 17186 of 2003

and W.P.M.P.Nos.20023, 21497, 21451, 21496, 21450 of 2003 and W.V.M. P.No. 1129 of 2003

W.P.No. 15952/2003.

Mrs. A. Sreedevi,
represented by her Power of Attorney
Agent, Dileep Bhandari. .. Petitioner.

-Vs-

1. The Commissioner,
Corporation of Chennai,
Chennai-600 003.

2. Member Secretary,
Chennai Metropolitan Development
Authority, Gandhi Irwin Road,
Chennai-8.

3. R. Ramachandran,

4. M/s. Shanthi Builders,
represented by its partner
Gowtham Chand.

(Respondents 3 and 4 were impleaded
as per order of Court dated 1-7-2003). .. Respondents.

W.P.No. 17159/2003

Dileep Bhandari
.. Petitioner.

Vs.

1. The Commissioner,
Corporation of Chennai,

Chennai-600 003.

2. Member Secretary,
Chennai Metropolitan Development
Authority, Gandhi Irwin Road,
Chennai-8.
.. Respondents.

W.P.No. 17186/2003

M/s. Shanthi Builders,
represented by its Partner
Gowtham Chand.

.. Petitioner.

Vs.

1. The Commissioner,
Corporation of Chennai,
Chennai-600 003.

2. Member Secretary,
Chennai Metropolitan Development
Authority, Gandhi Irwin Road,
Chennai-8.

3. Mrs. A. Sreedevi,
represented by her Power of Attorney
Agent, Dileep Bhandari.

.. Respondents.

Petitions filed under Article 226 of the Constitution of India, for issuance of Writs of Certiorari, and Certiorarified Mandamus, as stated therein.

!For Petitioners in W.P.Nos.15952
and 17159/2003 and for 3rd respondent in
W.P.17186/2003. : Mr.R.Krishnamoorthy, Senior Counsel
for M/s. P.Subba Reddy

Mr. A.L. Somayaji, Senior counsel for Mr. K.
Ramanath Reddy:- For petitioner in W.P.17186/2003
and for 4th Respondent in W.P.15952/2003.

For 1st Respondent in all W.Ps. : Mr. N.R. Chandran, Advocate General
for Mr. C. Ravichandran

Mr. K.A. Ravindran for C.M.D.A. in all W.Ps.

Mr. Srinath Sridevan for R-3 in W.P.15952/2003.

:COMMON ORDER

By consent of all the parties and in view of urgency in deciding the issue one way or other writ petitions themselves are taken up for final disposal. Since all the three writ petitions relate to property bearing Nos. 11 and 12, Bishop Wallers Avenue (South), Mylapore, Chennai-4, they are being disposed of by the following common order. Aggrieved by the order No. 1704 dated 30-5-2003 issued by the Commissioner, Corporation of Chennai under Section 258 of the Madras City Municipal Corporation Act IV of 1919, c alling upon the petitioner to fence off, take down, except stilt plus 4 floors, secure or repair such building so as to prevent any danger therefrom, the owner of the property, namely, A. Sridevi through her Power of Atttorney Dileep Bhandari has filed Writ Petition No. 15952/2003 to quash the same on various grounds.

2. The Power of Attorney Dileep Bhandari, aggrieved by the order No. ESI/10791/2002 dated 30-5-2003, passed by the Member Secretary, Chennai Metropolitan Development Authority, Chennai-8, 2nd respondent herein, forfeiting security deposit of Rs.70,000/- for the building and Rs.10,000/-for the Display Board, has filed Writ Petition No. 17159/2003 to quash the same.

3. Questioning the order dated 30-5-2003 passed by the Commissioner, Corporation of Chennai for the property bearing door Nos.11 and 12, Bishop Wallers Avenue (South) Mylapore, Chennai-4 issued under Section 378 of the Madras City Municipal Corporation Act intimating that the officers of the Corporation will enter the premises referred to above for the purpose of

demolishing the building in dangerous condition after expiry of 12 hours from the service of the said notice, M/s Shanthi Builders-Developers has filed Writ Petition No. 171 86/2003 to quash the same on various grounds.

4. The case of the owner of the property is briefly stated hereunder: According to Power of Attorney, he is the owner of the property bearing door Nos.11 and 12, Bishop Wallers Avenue(South), Mylapore, Chennai-4 and entrusted the property for joint development construction. Construction has been completed at the site over and above the sanctioned plan. The builder has put up additional floors and for putting up the same, applications had been made to Chennai Metropolitan Development Authority and Rs.13,18,920-50 has been paid and completion certificate has been issued by the C.M.D.A., by letter dated 11-2-2003. At the instance of the Metro Water and Sewerage Board, while digging up work was going on in the front road portion, one of the columns of the building given crack and the neighbouring owners given complaint to the Commissioner of Police, Member Secretary, Chennai Metropolitan Development Authority and Commissioner, Chennai Corporation.` All the above Agencies inspected the building and the Commissioner of Police issued order to take appropriate steps to strengthen the columns. The Member Secretary, C.M.D.A. issued notice dated 28-5-2003 and sought for explanation and given time upto

2-6-2003. He has taken Expert opinion and taking appropriate steps to strengthen the columns. At this juncture, the first respondent on 30-5-2003 around 11.30 P.M. affixed notice and stated that they want to demolish the buildign within 12 hours. No opportunity was given by the first respondent to the petitioner before passing the demolition notice. Hence the notice issued by the Commissioner, Corporation of Chennai is improper and against principles of natural justice. The petitioner had taken all steps to strengthen the columns. He also sought opinion from Experts and construction Engineers to strengthen the columns. He has also applied regularisation scheme with the C.M.D.A. and paid money also. The notice dated 30-5-2003 issued by the Commissioner, Corporation of Chennai is null and void. Hence the same is liable to be quashed.

5. The power of attorney in W.P.No. 17159/2003 in addition to the statement made in W.P.No. 15952/2003 has stated that petitioner had taken and now being followed to provide adequate steps to strengthen the columns of the building by utilising the services of a multi-national company. Reinforcing of all the columns instead of restricting themselves to affected column has already been commenced by Epoxy Injection grouting and once this work is completed more rebars above the foundation to increase the size of the columns will be placed. All these works have been carried out in the presence of Structural Engineer. Corporation Officials including the Chief Engineer are inspecting periodically to see that the work has been carried out at the building properly or not. While so, particularly when this Court has seized of the entire matter, the action of the Member Secretary, C.M.D.A. by issuing an anti-date order is arbitrary, illegal and it is against the principles of natural justice.

6. It is the case of the Shanthi Builders-Developer, petitioner in W.P.No. 17186/2003 that on receipt of notice from the Commissioner, Corporation, Chennai, they requested suggestion from both the Civic authorities in order to take appropriate steps. Already they have taken from highly technical persons the measures to improve the structures and they are doing the same to the building.

7. The Commissioner, Corporation of Chennai has filed a counter affidavit in W.P.No. 15952/2003 wherein it is stated that he received a complaint dated 27-5-2003 from Paxina Owners Association at No.10, Bishop Wallers Avenue, Mylapore, Chennai complaining that the concrete pillars in the adjacent multi-storeyed building (petitioner's building) started cracking and the steel rods were found to be exposed and bent which posed threat to cause damage to life and property of their building and also the general public. Immediately, the said complaint was forwarded to the concerned Zonal Office for taking necessary action besides deputing officials of the Corporation of Chennai to inspect the petitioner's building immediately. Accordingly the officials of Corporation of Chennai including the City Engineer made an inspection on 27-5-2003 in the presence of the representatives of the Builders and submitted an inspection report to the Commissioner, Corporation of Chennai on 27-5-2003 stating that the construction was completed for stilt plus 8 floors as against the sanction of stilt plus four floors, and a column in the west corner had developed cracks due to the reinforcement in the column has

been buckled and subsequent cracks were also seen in the adjacent walls. Hence it is considered as dangerous building for occupation. Immediately, on 27-5-2003 itself the Corporation of Chennai issued a notice under Section 258 of the Madras City Municipal Corporation Act, in and by which the builder was asked, within 7 days of service of the notice, to fence off, take down, secure and repair such building so as to prevent any danger therefrom. While so, on 30-5-2003, he received a copy of the report of Superintending Engineer, Public Works Department. In that report, it was mentioned that the building in question was in dangerous conditions posing threat to the public. It was further mentioned that the design structure was unsafe and that actual reinforcement in the column is only 6.78 cm2 (6 Nos.) as against the requirement of 23.85 cm2. The steel used is just about 1/4th of t he actual requirement. The structure was not stable for the existing condition of stilt plus 8 floors and that the reinforcement provided was just sufficient only for stilt plus 4 floors. Based on the report of the Superintending Engineer, Public Works Department, and the City Engineer of Corporation of Chennai and after due deliberation, it was felt that the building was in dangerous conditions posing threat to the life and it was decided to pull down the unauthorised and unsafe structure immediately. In exercise of power conferred under Section 258(2) of M.C.M.C. Act, notice dated 30-5-2003 was issued by giving 12 hours time to pull down the unauthorised structure and simultaneously notice under Section 378 of Madras City Municipal Corporation Act was also issued. Since the petitioner refused to receive the said notices, the same were affixed on the petitioner's premises with witnesses. Simultaneously, a press publication in respect of Notice under Section 258 of the said Act was published on 31-5-2003 in "Indian Express" and "Dina Boomi". Since the petitioner failed to take steps for demolition of the unauthorised dangerous structure till 12 noon on 31-05-2003, the Corporation officials had entered upon the premises and commenced the demolition work. At this state, the petitioners have approached this Court. Though this Court has not stayed the demolition work, however, permitted the petitioner to convince the inspecting officials of the Corporation as to the safety measures that can be provided to the present structure before ever the threatened demolition is resorted to and the order made it clear that it is for the inspecting authority to either accept or reject any such proposal that may be submitted by the petitioner. Since the Superintending Engineer, P.W.D., on inspection has certified that the column reinforcement are inadequate to take additional load, the building may collapse at any time, it was considered as imminently dangerous. Therefore, the Commissioner, Corporation of Chennai has issued notice under section 258 followed by notice under Section 378 of Madras City Municipal Corporation Act. Though the builder has assured to strengthen the column, the builders have not suggested as to how they would strengthen the beam running between the column. The load will be transferred from beam to column. Therefore, the building is not safe to exist in the present condition. Every minute the building stands pose a danger to public safety. The Commissioner, Corporation of Chennai is justified in issuing notice and taking action.

8. Senior Planner, Chennai Metropolitan Development Authority (CMDA in short) has filed a counter affidavit in W.P.No. 15952 /2003 wherein it is stated that on receipt of the complaint from one Proxima Owners Associaton at No.10,

Bishop Wallers Avenue, Mylapore, Chennai-4 stating that next to their building have started caving in and the steel rods found to be exposed and bent which may likely to cause damage to life and property of their building and also to the general public, a notice was issued by the Chennai Corporation to the developer Thiru Dhileep Bhandari under Section 258 of the M.C.M.C.Act, 1919, by which an opportunity was given to the developer to secure or repair such building so as to prevent any danger therefrom. The petitioner through their Power of Attorney has submitted an application for regularisation of the building at No.11 and 12, Bishop Wallers Avenue (South), C.I.T. Colony, Mylapore, Chennai-4 and paid the regularisation charges also. Therefore, N.O.C. for power supply and C.M.W. S.S.B. connection of sewere and water was issued by their office in letter No. 11-02-2003. Subsequently on 27-5-2003 the construction was inspected and noticed that some cracks are developed in one of the columns and due to this, the front main wall also developed with cracks. Therefore, a show cause notice was issued for cancellation of the NOC. The issue of NOC for the building does not amount to grant of planning permission under the Act. As on date, the building constructed more and above the planning permission issued by the respondent stands unauthorised.

9. In the light of the above pleadings, I have heard Mr. R. Krishnamoorthi, learned senior counsel for the owner of the property and Power of Attorney; Mr. A.L. Somayaji, learned senior counsel for the Developer-Shanthi Builders; Mr. N.R. Chandran, learned Advocate General, for Corporation of Chennai; Mr. K.A. Raveendran, learned counsel for C.M.D.A.; and Mr. Sreenath Sridevan, learned counsel for the third respondent in W.P.No.15952/2003, who is residing in the adjacent Flat at No.10, Bishop Wallers Avenue, Mylapore.

10. In these writ petitions we are concerned with the building constructed at Nos.11 and 12, Bishop Wallers Avenue (South), Mylapore, Chennai-4 and notice of rectification/demolition of part of the building dated 30-5-2003 issued by the Commissioner, Corporation of Chennai and order dated 30-5-2003 passed by Member Secretary, C. M.D.A. forfeiting security deposit etc. There is no dispute that planning permission was issued in respect of the building in question only for construction of stilt plus 4 floors (G plus 4 floors). Even according to the owner of the building and the Builder, construction has been completed at the site over and above the sanctioned plan. This is clear from para 2 of the affidavit of Dileep Bhandari, Power of Attorney of S. Sridevi, owner of the building in question. No doubt, it is the claim of the petitioners that after putting up additional floors, an application has been made to C.M.D.A. and necessary amount of Rs.13,18,920-50 paid and consequently C.M.D.A. issued completion certificate by letter dated 11-2-2003. It is also the case of the petitioners that when Metro Water and Sewerage Board dug up the earth in order to lay water pipe, one of the columns of the building was given crack and the neighbouring owner has given a complaint to the Commissioner of Police, C.M.D.A. and Chennai Corporation. The neighbour of the building, namely, Proxima Owners Association at No.10, Bishop Wallers Avenue, Mylapore made a complaint dated 27-5-2003 complaining that concrete pillars in the adjacent multi-storeyed building started cracking and the steel rods were found to be exposed and bent which posed threat to

cause damage to the life and property of the building and also the general public. It is seen from the information furnished by the Commissioner, Chennai Corporation that the complaint was forwarded to the concerned Zonal Office for taking necessary action besides deputing the officials of the Corporation to inspect the petitioner's building immediately. It is further seen that the officials of the Corporation of Chennai including the City Engineer made an inspection 27-5-2003 in the presence of the representatives of the Builders and submitted a report to the Commissioner of Chennai Corporation on the same day stating that the construction was completed for stilt plus eight floors as against the sanctioned plan for construction of stilt plus four floors-vide C.E.B.A.No.295/01 dated 11-7-2001 and a column in the west corner had developed cracks due to the reinforcement in the column has been buckled and subsequent cracks were also seen in the adjacent walls. It was considered that it is not safe for occupation. Considering the urgency and safety of the nearby residents as well as the general public, on 27-5-2003 itself the Commissioner, Chennai Corporation issued a notice under Section 258 of the Madras City Municipal Corporation Act (in short "MCMC Act") in and by which the petitioner-Builder was asked within 7 days of service of notice, to fence off, take down, secure and repair such building so as to prevent any danger from them. It is further seen that the Commissioner has also received a report of Superintending Engineer, P.W.D. on 30 -5-2003. In that report it was mentioned that the building in question was in dangerous conditions posing threat to the public. It was further mentioned in the report that the design structure was unsafe, the structure was not stable for the existing condition of stilt plus 8 floors and that the reinforcement provided was just sufficient only for stilt plus 4 floors. It is further seen that on the report of the Superintending Engineer, Public Works Department, and the City Engineer of Corporation of Chennai and after noting that the building was in dangerous conditions posing threat to the life and property, the Commissioner of Chennai Corporation decided to pull down the unauthorised and unsafe structure immediately. Hence in exercise of power conferred on him under Section 258 (2) of M.C.M.C.Act, notice dated 3 0-5-2003 was issued by giving 12 hours time to pull down the unauthorised structute and simultaneously notice under Section 378 of M.C.M. C.Act was also issued. At this stage, the owner, Power of Attorney and Builder have filed the above writ petitions.

11. When the interim applications were taken up for hearing, this Court, after hearing the arguments of counsel for all the parties and without prejudice to their rights on 1-7-2003 constituted a committee consisting of (i) Prof.Dr. P.K. Aravindan, Professor of Structural Engineering, Indian Institute of Technology, Chennai-36; (ii) Mr. Mohanramanathan, No.11, Cenotaph Road, Alwarpet, Chennai; and (iii) Mr. S. Ramachandran, Superintending Engineer, Public Works Department, Chennai-5. It is seen from the said order, the names were suggested by respective counsel for the parties. The Court has directed the committee to conduct necessary test in respect of the structural soundness of the building and also the possibility of strengthening it. The Court also directed the committee to offer its opinion relating to the steps taken by the petitioner and submit a report within one week. It is further seen that the committee after initial deliberations, prayed for another week's time to submit a report. The time was extended as requested. The committee has submitted its report with

reference to structual position of the building in question and also suggested remedial measures.

12. First I shall refer the report of Prof.Dr. P.K. Aravindan. He is the Professor of Structural Engineering in I.I.T., Chennai-36. He is a nominee of the owner and the Builder of the building. The following are the relevant materials/excerpts.

The work of assessing the quality of concrete and steel used in the construction was entrusted to the Structural Engineering Laboratory of IIT Madras, Chennai-36. From the I.I.T's report it is seen that the quality of concrete used in the construction was good and the damage to the column is not due to any deficiency in the quality of materials used in the construction. The committee got the services of Prof. S.R.Gandhi, Professor and Head, Geo-Technical Division, IIT Madras, Chennai-36 to study the report of two Geo-Technical investigation carried out at the site of the building. From the analysis, the following stress resultants acting on the column X16-Y1 which is failed, are obtained.
Axial load = 940.00 kN

The moment about the major axis x,

Mx = 0.07 kN-m

The moment about the minor axis y,

My = 2.88 kN-m

Assuming the characteristic strength of the concrete as 20 Mpa, the area of steel required to resist the above forces is 1650 mm2. The area of steel provided in the column is 6Y12 giving an area 678 mm2 which is only 41% of the required area of steel. This is the reason for the failure of that particular column. There might be other columns also in somewhat similar condition. Since the aim of this part of the investigation is only to assess the reason for the failure of the particular column X16-Y1, investigation on the condition of other columns is not carried out. From the table it can be seen that some of the columns have to be strengthened by jacketing which is indicated in the Table 1. A typical scheme of jacketing is shown in Fig 3.
It is of the opinion of the undersigned that the building as exists now (ground plus seven upper floors) can be strengthened to give satisfactory performance all through out the life of the structure. It is found that all the beams and slabs are safe to carry the load coming on them. Even the beams above the ground floor is checked for 2= times the bending moment due to earthquake being part of soft storey as per IS:1893 □ 2002 and it is found that they are all safe.
While doing the analysis and design it is presumed that the soil is capable of resisting the pressure coming on it, 110kN/m2 and also the settlement of the foundations will be within the permissible limits. However it could be seen from the analysis carried out by IIT, the safe bearing capacity of the soil is only 72 kN/M2 and the settlement will be beyond the permissible value. To improve the safe bearing capacity of the soil and also to reduce the

settlement, pressure grouting of the soil with cement slurry is recommended. Further a combined raft foundation at the ground level encasing the existing plinth beams is recommended. The raft shall extend one and half meter beyond the centre line of the existing external columns alround the building. The three dimensional analysis is again repeated by modelling the raft slab also. IIT has recommended a modulus of subgrade reaction of 6000 kN/m3 (Annexure I). With this value of modulus of subgrade reaction soil is replaced by soil springs in the 3D analysis. The bending moment diagram obtained from the analysis is shown in Fig.5. The raft is designed for the bending moment obtained from the analysis and details of the raft is shown in Fig.6. The raft is integrated with the existing columns as shown in Fig.6. With these modifications, committee of the opinion that the building with ground plus seven floors will be quite safe for occupation.

13. Now I shall refer the report of Mohan Ramanathan. He is a B.Tech, M.S., (USA) and Consultant. He is a nominee of the newly impleaded third respondent (neighbour of the petitioner). The following are the materials/excerpts:

c) DESIGN CHECK ON THE CORNER COLUMN:
Design check on Corner Column using SP-16 for Biaxial bending reveals that the column section is grossly inadequate to the loads coming on it.
e) REASONS FOR FAILURE
The reasons for failure of the corner column (J-Type) is quite obvious. Over loading due to additional stories built. The excessive noise generated from the column at the time of failure and witnessed by persons nearby and the workers in the building proves release of energy stored in the column due to heavy over loading. The bent reinforcement rods have no further use to take additional loads and the column in the present state should be considered failed and unsafe.
CONCLUSION
From structural view point, top 4 floors are to be dismantled to make the building safe and the loads on the existing structural members to be within safe limits i.e., only car park + 4 livable floors, to be allowed. Under the present loading of G + 8 floor, the structural capacity of the columns is unsafe.
B. FOUNDATION CHECK
Under the present loading condition of G + 8 floor, the foundation is unsafe.
EXPERT OPINION
....The corner column failure is enough evidence to prove the criticality of the situation. Most of the other columns are also in the same state and may fail any time without warning.
After analysing various consequences from the view of safety of the structure in question and the neighbouring structures, I have arrived at two alternatives to be considered by the Honourable Court.
Alternative -1:
Remove top 4 floors (8th floor already removed by Corporation of Chennai) to decrease the loading at the foundation level. The final structure shall be only G +4. In this case, the loads on the structural members such as columns, beams and slabs, will be safe and acceptable, structurally. In such case, no further strengthening need be done for any structural members. The strengthening already done at ground level is sufficient to take care of

Seismic loading on the truncated structure. Due to reduction in the foundation loads, the loads at the footing level will be reduced to within the safe bearing capacity. Subsequently, there will be no fear of excessive settlement or foundation failure.

Alternative -2:
If any more additional floors are to be permitted beyond G + 4 floors, then the structure will require extensive strengthening both for the structural members as well as for the foundation. Without the strengthening measures, the additional floors will impose heavy loads, which are unsafe to the structure and its foundation.

The maximum number of floors that can be permitted after strengthening of the foundation and structural members shall be restricted to G+6 . This means, one more floor is to be removed positively (7th floor) from the present structure.
In such case, I suggest the following strengthening measures:
a) All structural columns have to be strengthened adequately in all upper floors to resist static and dynamic loads.
b) Strengthen the foundation by underpinning with minipiles to transfer the column loads to firm strata occurring at about 20 Metres depth and stitch the piles to the existing footings and also strengthen and redesign the footings to act as pile caps. This involves expertise in design, execution and great caution while execution.

It is seen from his report the existing foundation structure would withstand only stilt + 4 floors and for keeping beyond Ground + 4 floors, he has suggested certain measures as detailed above.

14. Now I shall consider the report of the other Member, namely, Mr. S. Ramachandran, M.E., D.I.I.T., Superintending Engineer, Public Works Department, Planning and Designs Circle (Buildings), Chennai-5. The following are the materials/excerpts:

1.0 xx xx
2.0 As per the analysis and design results obtained, the columns need to be strengthened in many floors for the present Stilt + Seven floors.
3.00 xx xx
In this case, after studying the characteristics of the soil lying underneath the building, it is considered that the foundation needs to be strengthened. Now, the question arises as to how the building consisting of Stilt + Eight floors stood for a considerable time after construction then? The reason is that the normal factors of safety provided (2.5 in the case of foundations) were encroached upon. Hence the soil below the foundation has to be stabilised and strengthened by cement slurry grouting and a raft foundation as suggested by Prof. Dr.S.R. Gandhi of I.I.T., Madras.
4.0 Regarding strengthening of the building for withstanding the loads from the presently existing Stilt + Seven floors, the following measures are to be undertaken:
a) Complete strengthening of the foundations under expert guidance in design, detailing and execution. This almost amounts to total revamp of the

foundation system currently provided. Apart from cost considerations, the process of re-structuring the foundation is a difficult process and needs to be undertaken with utmost supervision and care.

At the end of his report, he has suggested some remedial measures for the columns of the building as observed by Dr. P.K. Aravindan. He finally suggested that for effective strengthening of the building, lucid specifications, construction methodologies and step-by-step procedure right from selection of appropriate construction materials, chemicals, tools and equipments are to be drafted by experts in this field. He also suggested that these works are to be executed under the expert guidance and supervision of a qualified senior structural engineer and that this process of thorough strengthening of this Stilt + Seven floors building will make it safe for human dwelling.

15. The petitioners, the neighbour as well as Corporation of Chennai and Chennai Metropolitan Development Authority filed their objections in respect of the reports filed by the three Experts. Likewise, the petitioners have also filed objection with regard to the report of Messrs. Mohan Ramanathan and S. Ramachandran. Their objections need not be discussed once again.

16. I have already referred to the fact that planning permission was granted only for Stilt + four floors by the Commissioner,Corporation of Chennai by proceedings dated 11-7-2001. Admittedly, construction was completed for Stilt + eight floors which is against the sanction. Accordingly, Stilt + four floors alone are lawful construction and the construction above four floors are unlawful and contrary to the sanctioned plan. As rightly argued by the learned Advocate General, the issue of N.O.C. for the building does not amount to grant of planning permission under the Act. Likewise, merely because the owner has paid required charges as per the regularisation scheme, it cannot be construed that the Authorities namely Corporation of Chennai and CMDA have condoned the action of the petitioners. As a matter of fact, no order has been passed by the CMDA or Government regularising the violations made by the petitioners.

17. Coming to the report of Mr. P.K. Aravindan, nominee of the owner of the building, after investigation and examining the entire building, particularly column X16-Y1, which is failed, the steel provided in the column is only 41 per cent of the requirement. Dr. Aravindan has considered that the column which has failed and has analysed it for the axial load and moments due to dead load alone, since at the time of failure the building was unoccupied. It is not disputed that usually the axial load and moments due to live load will be about 20 per cent of those due to dead load. As rightly argued on the side of the Corporation of Chennai and CMDA, if live load is also being considered, the reinforcement provided will be only about 30 per cent of what is required. I have also considered the recommendations of Indian standards. In his report, Dr. Aravindan has also observed that apart from failure of column

X16-Y1, there might be other columns also somewhat similar conditions. He also referred to various details in Table-I. In Table-I he has indicated the loads of all columns due to ground plus seven upper floors, i.e. after the demolition of the eighth floor and it shows that out of 38 columns, 34 columns are unsafe (vide page 139 of common Spiral type-set) filed by the petitioners. Four columns have been classified as "safe" on the assumption that the steel provided is more than what is required. Even this namely what is actually provided is known only to the contractor who executed the work since the same cannot be checked now. No doubt, he has suggested that the building as exists now (Ground plus 7 upper floors) can be strengthened together satisfactory performance all through out the life of the structure by following the modifications/ alterations as suggested by him. In this regard, it is relevant to refer that Dr. Aravindan had taken the service of Professor S.R. Gandhi, Professor and Consultant, Geotechnical Division, Department of Civil Engineering, I.I.T., Chennai-36. Here, it is relevant to note that Dr. S.R. Gandhi in his letter dated 16-8-2003 addressed to Professor P.K. Aravindan has complained that "...Surprisingly, both the soil investigation reports have not provided any consolidation test results. In absence of this data, it is very difficult to estimate the settlement of the building. However, it is felt that the settlement is likely to exceed the permissible limits for such foundations...." In the absence of "soil investigation report" and "settlement of the building", I am of the view that it is difficult to accept the suggestions made by Dr. P.K. Aravindan, who relied on the advice of Dr. S.R.Gandhi. Dr. Aravindan has also suggested that the soft clay strata form 3.75m to about 8m be improved by cement jet grouting for the entire building area plus 2m wide area beyond the edge of the foundation. It is not clear whether it would be possible to inject the cement slurry uniformly over the entire area in clay layer at such depth and that too with the existing foundations in place. Further, cement slurry will not percolate through clay layer and that too uniformly. Dr. Aravindan has also suggested strengthening of some columns by jacketing. I have already referred to that even according to him, it is clear from Table-I that out of a total of 38 columns, 34 columns in ground floor are unsafe and require jacketing. Same is the case almost upto fourth floor and certain columns are unsafe even upto fifth floor. It is clear that these columns are to be jacketed upto that level by adding a fresh layer of concrete around the existing columns after adding required extra steel. Here again, it is to be noted that the old and the new concrete will act as two different cores and will not act in unison completely. As rightly pointed out, extending the rods to the next floor through the existing roof beam will be impracticable. Even if it is done, there will be breaking the concrete at the junction of beam and column and recasting the same after the rods are extended. According to the respondents, if this is adopted the beam under loading may separate from the column and fail that will lead to serious disaster.

18. Coming to the report of Mr. Mohan Ramanathan, according to him, design check on the corner column using SP-16 for Biaxial bending reveals that the column section is grossly inadequate to the loads coming on it. He has opined that the reasons for failure of the corner column (J-Type)is over loading due to additional stories built. He has concluded that from structural view point, top four floors are to be dismantled to make the building safe and the

loads on the existing structural members to be within safe limits i.e. only Car Park place plus four livable floors to be allowed. He has finally concluded that under the present loading of G + 8 floor, the structural capacity of the columns is unsafe. He has also suggested two alternatives. As per alternative-1, the strengthening already done at ground level is sufficient to take care of Seismic loading on the truncated structure. By removing top 4 floors to decrease the loading at the foundation level. Due to reduction in the foundation loads, the loads at the footing level will be reduced to within the safe beaming capacity and there will be no fear of excessive settlement or foundation failure. He also suggested alternative-2. According to which, if any more additional floors are to be permitted beyond G + 4 floors, then the structure will require extensive strengthening both for the structural members as well as for the foundation. He observed that without strengthening measures, the additional floors will impose heavy loads, which are unsafe to the structure and its foundation. He also suggested that the maximum number of floors that can be permitted after strengthening of the foundation and structural members shall be restricted to Ground plus six. This means, one more floor is to be removed positively (7th floor) from the present structure. For adopting alternative-2, he suggested certain measures for strengthening the building. He also suggested for driving piles upto 20m depth and connect them to the existing footings. It is the apprehension of the respondents that driving piles with the ground floor roof in place is impossible. Further, stitching the existing footing with the piles will again mean breaking open the footings, exposing their rods, tying additional rods and reconcreting. This again will mean a construction joint and the same cannot be accepted. It is the apprehension of the first respondent that dismantling the existing foundation and casting a new pile cap is impossible with keeping the column intact with the load of eight floors resting on it. As rightly argued, though he (Mr. Mohan Ramanathan) has suggested structural strengthening of columns and other members, he has not discussed in detail about the method of strengthening. However, he has indicated that the outer columns can take only a maximum of four floor loads.

19. Coming to the report of Mr. S. Ramachandran, according to him, as per the analysis and design results obtained, the columns need to be strengthened in many floors for the present stilt + 7 floors. He suggested that soil below the foundation has to be stabilised and strengthened by cement slurry grouting and a raft foundation as suggested by Prof.Dr. S.R.Gandhi of I.I.T., Madras. Regarding strengthening of the building for withstanding the loads from the presently existing stilt + seven floors, he has suggested complete strengthening of the foundations under expert guidance in design, detailing and execution. According to him, this almost amounts to total revamp of the foundation system currently provided. He further opined that apart from cost considerations, the process of re-structuring the foundation is a difficult process and needs to be undertaken with utmost supervision and care. He also informed that in the recently published Indian Standard for earthquake resistant design of buildings, IS:1893-2002, Chennai has been brought under Zone-III of the seismic zoning map of India. According to him, this building has to be strengthened in accordance with the above code.

20. Though Mr.R. Krishnamoorthi and Mr. A.L. Somayaji, learned senior

counsel for the owner and builder respectively heavily relied on the suggestions of the three Experts, particularly Dr. P.K. Aravindan, it is clear from their reports that lesser steel have been used in the columns than the minimum as specified by the Indian Standard. Though Dr. Aravindan and Mohan Ramanathan have referred only about the structural capacities of columns and footing and not about the safety of the beams and slabs, when 34 out of 38 columns are under reinforced and when the loads provided for them is less than the absolute minimum for the prescribed standard, it is difficult to believe that the beams and the slabs are properly designed and reinforced. It is relevant to note that S. Ramachandran, Superintending Engineer, Public Works Department has clearly stated that complete strengthening of the foundations under expert guidance in design, detailing and execution amounts to total revamp of the foundation system currently provided. He added that apart from cost consideration, the process of re-structuring the foundation is a difficult process and needs to be undertaken with utmost supervision and care. Considering all these aspects, I am satisfied that the suggestion made by the three Experts are not full proof method. As rightly argued, the public safety should be taken into account while implementing the suggestions made by the Experts, more particularly when the steel provided in the column is 41 per cent of the requirement, that too only taking into consideration of dead load alone and not live load. In those circumstances, I am unable to accept the suggestions for keeping the building, namely, stilt plus 7 floors (8th floor since removed).

21. Now I shall consider whether the action taken by the Commissioner, Corporation of Chennai and Member Secretary, CMDA is in consonance with the statutory provisions. I have already referred to the fact that planning permission was granted in favour of the petitioners for construction of stilt plus 4 floors (G + 4). Admittedly, the building was constructed stilt plus 8 floors. After noticing the concrete pillars in the multi storeyed building (petitioner's building) started cracking and the steel rods were found to be exposed and bent which posed threat to cause damage to the life and property of their building and also the general public, Paxina Owners' Association residing at No.10, Bishop Wallers Avenue, Mylapore (neighbour to the petitioner's multi-storeyed building) made a complaint to the Commissioner on 27-5-2003. Section 258 of the M.C.M.C Act enables the Commissioner to take appropriate action to prevent danger from such building. The relevant provision reads as under:

"258. Precautions in case of dangerous structures.-(1) If any structure be deemed by the commissioner to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, the commissioner may by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary the commissioner may himself before giving such notice or before the period of notice expires fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in section 387.

(3) If in the commissioner's opinion, the said structure is imminently dangerous to the inmate thereof, the commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."

The above provisions enable the Commissioner to issue notice requiring the owner or occupier to fence off, take down, secure or repair any structure that was found to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, so as to prevent any danger therefrom. If the condition of the structure or building requires immediate action, the Commissioner may himself even before giving notice or before the period of notice expires, fence off, take down, secure or repair such structure to prevent danger and recover the cost of doing from the owner or occupier in the manner provided in Section 387 of the Act. In the counter affidavit, the Commissioner, Corporation of Chennai has explained that on receipt of the complaint dated 27-5-2003, he had given necessary directions to the officials, including the City Engineer to inspect the building in question and submit a report. The City Engineer made an inspection on 27-5-2 003 in the presence of representatives of the Builders and submitted a report to the Commissioner on the same day stating that the construction was completed for stilt plus eight floors as against the sanction of stilt plus four floors and a column in the west corner had developed cracks due to the reinforcement in the column which has been buckled and he also noticed cracks in the adjacent walls. In the report the City Engineer explained that it is a dangerous building for occupation. Based on his report, the Commissioner on 27-5-2003 issued a notice under Section 258 of the M.C.M.C Act, in and by which the petitioner builder was asked, within 7 days of service of the notice to fence off, take down, secure and repair such building so as to prevent any danger therefrom. It is further seen from the counter affidavit that on 30-5-2003, he received a report from the Superintending Engineer, Public Works Department. In that report, the Superintending Engineer mentioned that the building in question was in dangerous condition posing threat to the public. He also mentioned that the design structure was unsafe and the actual reinforcement in the column is only 6.78 cm2 (6 Nos.) as against the requirement of 23.85 cm2. He also expressed that the steel used is just about 1/4th of the actual requirement. He further mentioned that as the columns had not been suitably designed, the structure was not stable for the existing condition of stilt plus 8 floors and that the reinforcement provided was just sufficient only for stilt plus 4 floors. Based on the report of the Superintending Engineer, Public Works Department and the City Engineer of Corporation of Chennai, after due deliberation and after satisfying himself that the building was in dangerous conditions, posing threat to the life, it was decided to pull down the unauthorised and unsafe structure immediately. In exercise of power conferred on the Commissioner, Corporation of Chennai under Section 258 (2) of M.C.M.C. Act, notice dated 30-05-2003 was issued by giving 12 hours time to pull down the unauthorised structure except stilt plus 4 floors and also simultaneously issued notice under Section 378 of the Act. Apart from this specific assertion in the counter affidavit, namely, the complaint by the neighbours, inspection by the officials including the City Engineer on 27-5-2003, initial notice, inspection of Superintending Engineer, Public Works Department on 30-5-2003 and notice under Section 258 (2) made in the counter

affidavit, learned Advocate General has also produced File from the Commissioner, Corporation of Chennai which contains all the above mentioned materials. I have gone through all the details and I am satisfied that the Commissioner has considered all the relevant materials and by virtue of the power conferred under Section 258 of the M.C.M.C.Act, taking note of the design structure, actual reinforcement in the columns which were unsafe, issued notice under sub-section (2) of Section 258. I have already referred to the fact that the construction and above the permissible area namely 5th floor to 8th floor is an unauthorised one. In this regard, it is relevant to refer a decision of the Supreme Court in M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu, reported in (1999) 6 Supreme Court Cases 464. In that decision, Their Lordships have held that if it is an unauthorised construction, the Court should order demolition of such structure even though builder invested considerable amount. The following conclusion/observation is relevant: (para 73)

"73.....This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.....".

In the facts, materials and circumstances demonstrated in the case on hand, I am of the view that the said decision is directly applicable to the case on hand and I hold that the Commissioner, Corporation of Chennai is perfectly right in issuing notice under sub-section (2) of Section 258 and there is no ground for interference. It is also settled law that even after obtaining planning permission under the Tamil Nadu Town and Country Planning Act, the construction of the building is subject to fulfilling the provisions of M.C.M.C. Act. I conclude that notice issued under Section 258 as well as 378 of M.C.M.C. Act are valid.

22. Coming to the action taken by the Member Secretary, Chennai Metropolitan Development Authority, it is true that the Power of Attorney has submitted an application for regularisation of the building at No.11 and 12, Bishop Wallers Avenue, Mylapore, Chennai-4 and paid regularisation charges also. It is also true that N.O.C. for power supply and CMWSSB connection of Sewere and Water was issued by the Chennai Metropolitan Development Authority in their letter dated 11-02-2003. However, it is brought to my notice that subsequently, on 27-5-2003 the construction was inspected and it was noticed development of some cracks in one of the columns and due to this, the front main wall also develped with cracks. Therefore, a show cause notice was issued for

cancellation of N.O.C. in their letter dated 28-5-2 003 and the same was acknowledged by the owner on 29-5-2003. The owner had sent a reply dated 31-5-2003 stating that remedial measures are being taken by appointing Swiz Multinational Company. Though Chennai Metropolitan Development Authority has issued N.O.C for getting power supply, sewere and water connection, in the light of the provisions of M.C.M.C. Act, I am of the view that the issue of N.O.C. for the building does not amount to grant of planning permission under the Act. As on date, the construction of the building more and above the planning permission issued by the concerned authority stands unauthorised. In those circumstances, the action taken by Chennai Metropolitan Development Authority forfeiting the security deposit cannot be faulted with.

23. In the light of what is stated above, I do not find any merit in the claim made by the petitioners and I hold that the actions taken by the Commissioner, Corporation of Chennai and the Member Secretary, Chennai Metropolitan Development Authority are in accordance with the statutory provisions and they are within their powers. Therefore, I hold that the Commissioner, Corporation of Chennai is fully justified in directing the owner and the Builder to demolish the unauthorised construction, except the stilt plus four floors in premises No.11 and 12, Bishop Wallers Avenue (South) Mylapore, Chennai-4. Equally, the Member Secretary, Chennai Metropolitan Development Authority is also fully justified in forfeiting the security deposit. Consequently, all the Writ Petitions fail and are accordingly dismissed. No costs. All the connected miscellaneous petitions are closed.

R.B.

Index:- Yes
Internet:- Yes

To:-

1. The Commissioner,
Corporation of Chennai,
Chennai-600 003.

2. Member Secretary,
Chennai Metropolitan Development
Authority, Gandhi Irwin Road,
Chennai-8.

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